

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**LINDA L. KITZMILLER and
RICHARD C. KITZMILLER,**

Plaintiffs,

v.

**Civil Action No. 2:05 CV 22
(Maxwell)**

JEFFERSON SUPPLY COMPANY,

**Defendant and
Third Party Plaintiff,**

v.

THE BUTCHER COMPANY,

Third Party Defendant.

ORDER

By Order entered on September 19, 2005, the Court referred the above-styled matter to Magistrate Judge John. S. Kaul for pretrial development. On March 2, 2006, Defendant The Butcher Company and Plaintiffs filed a joint Motion to Dismiss Count II of the Amended Complaint. Also on March 2, 2006, Defendant The Butcher Company and Plaintiffs filed a joint Motion to Dismiss The Butcher Company. On March 6, 2006, the Court received a correspondence from Defendant Jefferson Supply Company's counsel, Michael Crim, stating that it objected to the Motion to Dismiss Count II and the Motion to Dismiss The Butcher Company, which letter also requested an evidentiary hearing on the issue. The Court filed Mr. Crim's letter on that date. Thereafter, on March 16, 2006, Defendant Jefferson Supply Company filed a Response to the Motion to Dismiss Count II and the Motion to Dismiss The Butcher Company.

Magistrate Judge Kaull conducted a hearing on the issue on March 21, 2006, and filed with the Court his Report and Recommendation on April 10, 2006. In his Report and Recommendation, Magistrate Judge Kaull recommends to the Court that Defendant The Butcher Company and Plaintiffs' joint Motion to Dismiss Count II of the Amended Complaint and Motion to Dismiss The Butcher Company be granted and that the proposed orders submitted by the moving parties be entered. Magistrate Judge Kaull's Report and Recommendation further directed the parties, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. On April 24, 2006, Jefferson Supply Company's Objections to the Report and Recommendation/Opinion were filed. The Butcher Company's Response to Jefferson Supply Company's Objections To Report and Recommendation/Opinion was filed on May 8, 2006, and on May 9, 2006, Plaintiffs' Response to Jefferson Supply Company's Objections To Report and Recommendation/Opinion was filed.

Upon examination of the report from the Magistrate Judge, Defendant Jefferson Supply Company's Objections, and the Responses filed thereto, it appears to the Court that the matter was thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. The Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the proposed Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Moreover, Defendant Jefferson Supply Company's objections have not raised any issues that were not thoroughly considered by the Magistrate Judge in his Report and Recommendation.

Accordingly, it is

ORDERED that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and adopted herein. As recommended by Magistrate Judge Kaull, the Court will enter, contemporaneous herewith, the proposed orders submitted by the parties, namely , the "Order of Voluntary Dismissal of Count II of the Amended Complaint" and the "Dismissal Order."

The Clerk is hereby directed to transmit copies of this Order to all counsel of record.

ENTER: June 8th, 2006


United States District Judge